IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

Sohan Lal & ors. vs. The State of Rajasthan & ors.

S.B. Civil Writ Petition No. 2584/2004 under Article 226 of the Constitution of India.

Date of Order: August 11, 2005.

RESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. S.D. Rajpurohit, for the petitioners.

Mr. K.N. Joshi, Mr. L.R. Upadhyay, Mr. Y. Mehta and Mr. Hemant Choudhary for the respondents.

BY THE COURT:

The case as presented by the petitioners has a long history, therefore, it will be worthwhile to mention facts relevant for the purpose of deciding this writ petition. According to the petitioners, the total area of land measuring 5 bighas 1 biswa situated in Pali Chak No.1 of Khasra Nos.837/1, 838 and 839 were in joint khatedari of Sayar Kanwar 1/10, Bastimal 7/40 and Leeladevi 11/20 share in the land. The names of the above co-sharers continued in the *Jamabandi which is evident from the copy of the J*amabandi for the Samvat Year 2039-42 (Annx.10). According to petitioners, Leeladevi's husband Labhchand

connived with the Patwari of the area, submitted a written complaint on 12.10.84 to the Tehsildar, Pali showing the name of only Leeladevi as Khatedar tenant and Kankaria Fabrics as using the above land for industrial purpose. According to the petitioners, other khatedars were not impleaded as parties and proceeding under Section 91/90-A of the Rajasthan Land Revenue Act, 1956 (for short 'the Act of 1956') was registered. The Tehsildar by order dated 27,10.1984, appointed the Patwari as Receiver for the property in dispute which according to the petitioners was only paper proceeding. According to the petitioners, an order of eviction was also passed by the Tehsildar on 31.7.1985 and that order was challenged upto second appeal but the second appeal was dismissed by the revenue appellate authority by order dated 15.7.1992 (Annx.3). However, the Board of Revenue, by exercising power under Section 9 of the Act of 1956 remanded the matter back to the Tehsildar. The Tehsildar by order dated 16.8.1993 passed the order of eviction against the Khatedars of the land. This proceeding was also taken upto the second appeal which was dismissed by the revenue appellate authority by order dated 16.8.1993. M/s Kankaria Fabrics preferred a revision petition to challenge the order of the revenue appellate authority dated 16.8.1993. According to the petitioners, one of the co-sharers Sayaridevi settled her 1/10 share in the above agricultural land in favour of her sons Sohanlal, Sampatraj, Soorajmal and Ashokkumar.

On the basis of above settlement, the names were entered in the *Jamabandi* for the Samvat Year 2048-51. This settlement deed is dated 13.12.1990.

According to the petitioners, during the pendency of the revision petition (No. 323/93) which was preferred by M/s Kankaria Fabrics, to challenge the order of the revenue appellate authority dated 16.8.1993, Smt. Leeladevi and M/s Kankaria Fabrics entered into a settlement and the co-khatedars Bastimal and Ghamandaram also joined in the settlement without informing any of the other co-khatedars and in pursuance of the settlement, the sale-deeds were executed and registered in favour of various persons. According to the petitioners, the seller sold the undivided share in the property, though the land has already been partitioned. It is also submitted that all the sale-deeds have been executed and got registered by Smt. Leeladevi through her son Rajkumar as her power of attorney holder, Bastimal and Ghamandaram through Parasmal (the partner of the Kankaria Fabrics & brother of leeladevi) as their power of attorney holder.

The revision petition no. 332/93 filed by M/s Kankaria Fabrics was allowed by the Board of Revenue and the matter was remanded back to the Tehsildar by order dated 30.1.1997.

After remand, the Tehsildar registered the remanded case as Case No.17/1997 and started proceeding from 15.5.1997. The Tehsildar by order dated 30.11.2000 summoned the *Jamabandi* and the site report from the Patwari so that the case under Section 90-B of the Act of 1956 can be prepared and may be sent for orders. According to the petitioners, the case continued before the Tehsildar till 20.8.2001 but no site report or *Jamabandi* were submitted before the Tehsildar.

According to the petitioners, on one hand, the proceedings in the said Case No.17/1997 were going on under Section 91 and 90-A of the Act of 1956 on the ground of unauthorised use of the agricultural land by M/s Kankaria Fabrics but at the same time, proceedings under Section 90-B of the Act of 1956 were initiated by the Tehsildar for conversion of the land. For that purpose an application was submitted on 16.7.2001. According to the petitioners, the land could not have been regularised only for housing and commercial use under Section 90-B of the Act of 1956, still the case of the illegal use of the land was taken up for regularising knowing it well that the allegation against M/s Kankaria Fabrics is that the said firm is using the land for industrial purpose.

By order dated 6.8.2001, passed in the case No.193/2001, the authorised officer after leaving the land of Khasra no.838 of 1 bigha 10

biswas, which has been used for industrial purpose and was not within the jurisdiction of the authorised officer, declared the remaining land of Khasra nos. 837/1, 838 and 839 as *Abadi* land on 29.10.2001 and got their appeal dismissed as withdrawn by order dated 3.11.2001.

It appears from the submissions of the petitioners in the writ petition that certain sale-deed was executed on 20.1.2004 also by Leeladevi and got the mutation sanction on 28.2.2004 which according to the petitioners, was in contravention of Section 211 of the Act of 1955. Apart from above, a suit was also filed on 30.1.2004 for perpetual injunction and an application for grant of temporary injunction was also granted in the court of Civil Judge (JD), Pali against the State through the Collector, the State through the S.D.O., Pali and the State of Rajasthan through the Tehsildar, Pali and the Municipal Council, Pali. According to the petitioners, in this suit also, the petitioners were not impleaded as parties. According to the petitioners the civil court had no jurisdiction as the land was agricultural land but no objection was raised by the defendants and the civil court granted the injunction to maintain the status quo and appointed a Commissioner for site inspection. The petitioners Soorajmal and Ashokkumnar submitted application for being impleaded as parties under Order 1 Rule 10, C.P.C. on 28.2.2004. According to the petitioners, by taking help of the proceedings in the

civil court, the respondents started raising illegal construction on the property in dispute. According to the petitioners, for the first time in the month of October, 2003 and thereafter, the petitioners came to know that as many as 36 sale-deeds have been executed and the property was dealt with in this manner by some of the co-sharers. The petitioners submitted a detailed list of sellers and purchasers and the dates on which the sale-deeds were executed which runs from 30.11.1996 to 18.5.1998. The petitioners apprehended that now the Pattas will be issued to the various purchasers by the Municipal Council, Pali, Senior Town Planner, Jodhpur, therefore, the petitioners gave notices to the Municipal Council, Pali and the Senior Town Planner, Jodhpur on 19.12.2003 informing them that the land in part has been sold to various persons and the land has already been entered in the name of the Municipal Council, Pali by mutation nos.1713 and 1714 but as per sub-clause (6) of Section 90-B of the Act of 1956, no Patta can be issued for the land which is in the share of the petitioners, therefore, no Patta be issued and in case any proceeding for issuing grant of Patta is pending, the same be closed. The petitioners, thereafter served another notice upon the Municipal Council, Pali and the Senior Town Planner, Jodhpur on 2.2.2004. According to the petitioners, the Municipal Council, Pali vide communication dated 24.3.2004 informed the petitioners that the petitioners have no right in the land in dispute as

they lost their right by withdrawing appeal against the order dated 6.8.2001. The Municipal Council, Pali also informed that unless there is an stay order from the competent court, the Municipal Council is not in a position to grant any relief to the petitioners and the Municipal Council will proceed after 15 days in accordance with law. The petitioners again served a registered notice (Annx.28) dated 26.3.2004 upon the Municipal Council, Pali. According to the petitioners, nothing was done by the Municipal Council, Pali thereafter but it was due to the election of the Parliament. The petitioners, therefore, has apprehension that the Municipal Council, Pali will issue Pattas in favour of the purchasers of the property.

According to the learned counsel for the petitioners, the facts reveal that the proceedings were taken for illegal use of the agricultural land by some of the khatedar tenants and despite order of eviction and pendency of the proceeding for eviction of the khatedar tenants, the land has been wrongly declared *Abadi* land and accepted by the Municipal Council on the basis of the alleged surrender and the Munucipal Council, Pali is proceeding to give Pattas to various persons. According to the learned counsel for the petitioners, the land could not have been surrendered by some of the khatedar tenants nor the land could have been converted under the provisions of Section 90-B(6) of

the Act of 1956.

The petitioners in this writ petition, challenged the order dated 6.8.2001 (Annx.9) inspite of the fact that the petitioners themselves not only preferred appeal No.178/2001 to challenge the order dated 6.8.2001 before the Addl. Collector, Jodhpur but they got the appeal dismissed in the year 2001, particularly on 3.11.2001. After more than three years, now the petitioners want to challenge the order dated 6.8.2001 again. The petitioners' challenge to the order dated 6.8.2001 cannot survive in view of the fact that admittedly the above order was appealable and admittedly the petitioners challenged the above order by filing the appeal and the appeal has been dismissed as not pressed. The grievance of the petitioners is that respondents no.1 and 2-the State and the Municipal Council, Pali cannot pass any order under Section 90-B(6) of the act of 1956 and cannot issue any Pattas in favour of respondents no.6 to 8 or their transferees without all the co-tenants jointly request for such an order or Pattas in their favour. The events mentioned above, as given out in the writ petition, itself clearly reveal that the properties in question were dealt with by the parties and substantially the proceedings were in the knowledge of the petitioners and the sale-deeds were registered in favour of the transferees as back as in the year 1996 and the petitioners want to submit that the

petitioners still have share in the property in dispute then that involves serious disputed question of facts. It appears from the totality of the facts that the dispute is between the two private parties or two sets of the private parties with respect to some immovable property which according to the petitioners, was once upon the time was agricultural land and various proceedings were initiated by the revenue authorities for eviction of the khatedar tenants on the ground of illegal use of the land and orders were passed and challenged by filing appeals and further appeal and revision. Those orders attained the finality and still the petitioners want to challenge or want to say that though the petitioners were not party in these proceedings and these proceedings were initiated by connivance of the State authorities with petitioners' rivals but now petitioners want to take benefit of these orders also. The petitioners, therefore, cannot be allowed to challenge the initiation of the proceeding before Tehsildar and take benefit of the order in these proceedings. There is no explanation for not challenging the orders in time but it appears that when the proceeding for issuance of Pattas for the land which has already been declared *Abadi,* started, the petitioners took a chance to challenge all previous orders in the garb of seeking relief against respondents no.1 and 2 restraining them from issuing Pattas in favour of the transferees or respondents no.6 to 8, that too, without impleading any of the transferees as party in the writ petition

despite the fact that the petitioners themselves are knowing full particulars of the transferees as the petitioners themselves have disclosed the particulars of the transferees in Annx.5. Restraining respondent nos.1 and 2 from issuing Pattas in favour of transferees, shall be an order against the transferees or respondents no.6 to 8 and that order cannot be passed unless they are given opportunity of hearing, therefore, also the writ petition is not maintainable.

The facts mentioned in detail above clearly reveal that though the reliefs are guarded but effect of the reliefs will be re-opening the issues which stands decided by the orders passed by the revenue authorities and which have not been challenged and which was challenged, the challenge against that has been withdrawn.

In view of the above, since the writ petition of the petitioners deserves to be dismissed on the ground of inordinate delay, non-joinder of the parties and in view of the fact that the petitioners failed to challenge the orders by filing appeal in time, therefore, the judgments relied upon by the learned counsel for the petitioners are not relevant.

Hence the writ petition of the petitioners is dismissed.

(PRAKASH TATIA)J.

mlt.